

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE FOR THE TWENTIETH
JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Petitioner,

v.

COMPUCARE AUTO DIAGNOSTIC
CENTERS, INC., a Tennessee corporation,
doing business as MURFREESBORO KIA,

Respondent.

ASSURANCE OF VOLUNTARY COMPLIANCE

THIS ASSURANCE OF VOLUNTARY COMPLIANCE ("Assurance") is given by COMPUCARE AUTO DIAGNOSTIC CENTER, INC., a Tennessee corporation, doing business as MURFREESBORO KIA of Murfreesboro, Tennessee ("Respondent"), to PAUL G. SUMMERS, Attorney General and Reporter for the State of Tennessee ("Attorney General") on behalf of the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance ("Division").

WITNESSETH:

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division and the Attorney General conducted an investigation of specific business practices of Respondent. These practices include conducting a "CHRISTMAS GIVEAWAY" which required the purchase of a car between December 1-21, 1999 as a condition to being entered in the giveaway. During December of 1999, the giveaway was promoted in a multiple page *Tennessean*, *Daily News Journal*, *The Review Appeal* and *The Brentwood Journal* newspapers advertising insert. Additionally, the same Murfreesboro KIA advertising insert promoted "WIN \$5,000.00 INSTANTLY! (LOOK INSIDE)."

Consumers could not determine instantly from looking inside the advertisement whether they had won. Respondent's advertisement insert inside stated:

YOU'VE DEFINITELY WON

your choice of ...

I. \$5,000.00 IN GOLD BARS

II. \$5,000.00 HAWAIIAN

VACATION

III. \$5,000.00 CASH

...if the last six (6) digits of your drivers license match the

lucky numbers posted in our showroom. **IT's THAT EASY!****

However, not everyone whose driver's license matches the last 6 digits will actually win one of the items. Only the first person to make a match will actually win one of the prizes. The State contends it is unfair and deceptive to state "YOU'VE DEFINITELY WON" when you may not have won because you might not be the first person to attempt to claim the prize. These contests and giveaways also include numerous violations of the Tennessee prize, gift and award statutes located at Tenn. Code Ann. § 47-18-120 and § 47-18-124. Respondent's business practices are more fully described in the State's Petition. As a result of the investigation, the Division and the Attorney General determined that certain acts and practices of Respondent violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.* (the "Act").

B. Respondent neither admits nor denies any wrongdoing. Further, pursuant to Tenn. Code Ann. § 47-18-107(c), acceptance of this Assurance by Respondent shall not be considered an admission of a prior violation of the Act.

C. Therefore, pursuant to Tenn. Code Ann. § 47-18-107, Respondent desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation.

NOW, THEREFORE, acting pursuant to Tenn. Code Ann. § 47-18-107, Respondent gives, and the

Attorney General accepts, the following assurances:

1. DEFINITIONS

As used in this Assurance and accompanying Agreed Order, the following words or terms shall have the following meanings:

1.1 "Assurance of Voluntary Compliance" or "Assurance" shall refer to this document entitled Assurance of Voluntary Compliance in the matter of State of *Tennessee v. CompuCare Auto Diagnostic Center, Inc., a Tennessee corporation, doing business as Murfreesboro KIA*.

1.2 "Consumer" means any person, a natural person, individual, governmental agency or other entities, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.

1.3 "Division" or "Division of Consumer Affairs" shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.

1.4 "Respondent" shall refer to CompuCare Auto Diagnostic Center, Inc., and Murfreesboro KIA and/or any and all officers, owners, employees, agents and representatives of CompuCare Auto Diagnostic Center, Inc. and Murfreesboro KIA.

1.5 "Petitioner", "State of Tennessee", or "Attorney General" shall refer to the Tennessee Attorney General & Reporter and the Office of the Tennessee Attorney General.

1.6 "Tennessee Consumer Protection Act" or "Consumer Act" shall refer to the Tennessee Consumer Protection Act of 1977 and related statutes found at Tenn. Code Ann. §§ 47-18-101, *et seq.*

1.7 "Tennessee prize, gift and award statutes" shall refer to the statutes relating to the prize promotions located at Tenn. Code Ann. § 47-18-120 and § 47-18-124.

2. JURISDICTION

2.1 Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and Agreed Order, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Respondent agrees to pay all court costs and attorneys' fees and any costs associated with any petitions to enforce any provision of this Assurance and Agreed Order against Respondent.

3. VENUE

3.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Chancery Court of Davidson County, Tennessee.

4. PERMANENT INJUNCTION

Accordingly, it is hereby agreed that upon approval of the Court, Respondent shall be permanently and forever enjoined and bound from directly or indirectly engaging in the practices set forth herein:

4.1 Respondent shall be prohibited from directly or indirectly engaging in any misleading, unfair or deceptive acts or practices in the conduct of its business. Respondent shall fully comply with all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.*, including but not limited to § 47-18-104(a) and (b)(27), which prohibit unfair and deceptive acts and practices.

4.2 Respondent shall fully comply with Tenn. Code Ann. § 47-18-120 when offering a prize, gift, award, incentive promotion or thing of value to a consumer.

4.3 Respondent shall fully comply with Tenn. Code Ann. § 47-18-124 when offering a prize, gift, award, incentive promotion or thing of value to a consumer.

4.4 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall clearly and conspicuously disclose the approximate verifiable retail price of each prize, gift, award, incentive promotion or thing of value offered. Additionally, Respondent shall have substantiation for the approximate verifiable retail value as required by Tenn. Code Ann. §§ 47-18-120(c)(1)(D) and (E).

4.5 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall be prohibited from, directly or indirectly, stating that a consumer is a "winner" (or term or phrase of similar import), if those contacted have not won or are not eligible to win.

4.6 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall be prohibited from, directly or indirectly, stating that a consumer has won or could win a prize (or term or phrase of similar import), if receipt of the prize is conditioned upon making a purchase or incurring any monetary obligation unless such conditions, including the amount of that monetary obligation, are clearly and conspicuously disclosed at the time of the initial offer.

4.7 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall be prohibited from, directly or indirectly, failing to clearly and conspicuously disclose a statement of the odds in Arabic numerals immediately adjacent to each item offered as a prize, gift or award.

4.8 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall be prohibited from, directly or indirectly, requiring a consumer or person to incur any monetary obligation, excluding nominal postage costs, in order to determine which, if any, prize the consumer or person is offered or will receive, or to continue to remain eligible to receive any prize.

4.9 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall be required to clearly, conspicuously and affirmatively disclose the approximate total of all costs, fees or other monetary obligations that must be satisfied before the consumer or person is entitled to receive or use the prize or product offered.

4.10 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall be

prohibited from, directly or indirectly, failing to clearly and conspicuously disclose a general description of the types and categories of restrictions, qualifications or other conditions that must be satisfied before the consumer or person is entitled to receive or use the prize or product or service offered.

4.11 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall be prohibited from, directly or indirectly, failing to clearly and conspicuously disclose any deadline by which the consumer must visit the business or otherwise respond to in order to receive the prize or product or service offered.

4.12 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall be prohibited from, directly or indirectly, failing to clearly and conspicuously disclose the date or dates on or before which the prize, product or service offer will terminate or expire.

4.13 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall be prohibited from, directly or indirectly, failing to clearly and conspicuously disclose when the prizes will be awarded.

4.14 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall be prohibited from directly or indirectly, failing to clearly and conspicuously disclose any other conditions such as minimum or maximum age qualifications or financial qualifications.

4.15 Respondent shall be prohibited, directly or indirectly, from making any representation(s) to consumer(s) that a transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law, in violation of Tenn. Code Ann. § 47-18-104(b)(12). Specifically, Without limiting the scope of this provision, Respondent shall be prohibited from directly or indirectly, representing to consumers that he/she must purchase goods or services from the Respondent in order to participate in a contest or giveaway.

4.16 Respondent shall be prohibited, directly or indirectly, from stating or promoting that a consumer can win "instantly" (or a term or phrase of similar import), if the consumer will not actually "instantly" learn whether they have won.

4.17 Respondent shall be prohibited, directly or indirectly, from stating or promoting that a consumer can "win instantly by looking inside" (or a term or phrase of similar import,) if the consumer will not actually learn if they have won by looking inside the advertisement.

4.18 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall be prohibited from directly or indirectly, failing to provide a free method of entry to all consumers. Without limiting the scope of this provision, Respondent shall be required to clearly and conspicuously disclose the free method of entry immediately adjacent to any references to the prize, gift, award, incentive promotion or thing of value.

4.19 Respondent shall fully comply with all applicable lottery laws including but not limited to Tenn. Code Ann. § 39-17-501 *et seq.*

5. RESTITUTION REPRESENTATION

5.1 Respondent represents and warrants that it has received no consumer complaints regarding the "Christmas Giveaway" or the "WIN \$5,000.00 INSTANTLY" contest. Respondent understands that the State expressly relies upon Respondent's representation that if this representation is false, inaccurate, deceptive, unfair or misleading, the State has the right to move to vacate or set aside this Assurance and Agreed Order and request that Respondent be held in contempt, if the State so elects.

5.2 Further, Respondent agrees that if any consumer comes forward it will favorably resolve that complaint in conformity with Tenn. Code Ann. § 47-18-120(d)(2). Respondent shall provide the name, address and amount of any refund to the Director of the Division of Consumer Affairs within two (2) days of providing a refund to a consumer pursuant to this section.

6. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE

6.1 Respondent shall pay the sum of Two Thousand and 00/100 Dollars (\$2,000.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Attorney General" on the day of execution of this Assurance.

7. CIVIL PENALTIES

7.1 Respondent shall pay the sum of Two Thousand Seven Hundred and Fifty and 00/100 Dollars (\$2,750.00) to the State of Tennessee as a civil penalty pursuant to Tenn. Code Ann. § 47-18-108(b)(3). Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Civil Penalty" on the day of execution of this Assurance.

8. CONSUMER EDUCATION FUNDING

8.1 Respondent shall pay the sum of Seven Hundred Fifty and 00/100 Dollars (\$750.00) to the State of Tennessee to fund a consumer education project selected at the sole discretion of the Director of the Division of Consumer Affairs. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Division of Consumer Affairs" on the day of execution of this Assurance.

9. FORBEARANCE ON EXECUTION AND DEFAULT

9.1 No execution or garnishment on the monetary portion of this Assurance and Agreed Order shall issue so long as the Respondent makes payment in accordance with paragraph 9.2 herein. In the event Respondent fails to make any such payment within thirty (30) days of its due date, the entire balance of this Assurance and Agreed Order then remaining may be collected by execution, garnishment or other legal process, together with interest pursuant to Tenn. Code Ann. § 47-14-121 from the date of entry of this Assurance and Agreed Order. Respondent agrees to pay attorneys' fees and costs associated with any such collection efforts.

9.2 Payment shall be made to the Consumer Protection Division, Office of Attorney General as follows: \$2,500.00 due April 15, 2000 and \$3,000.00 due on June 15, 2000. The first payment shall be applied toward the attorneys' fee obligation and the second payment shall be applied toward the remainder of the attorneys' fee payment, and then to the the consumer education funding and civil penalties obligations.

9.3 Respondent shall be required to retain proof of all payments to the State in the form of canceled checks for each payment for a full two (2) years following their final payment to the State. Respondent shall provide proof of all payments to the State within 10 days of a request for such information.

9.4 Respondent agrees that any and all such sums are non-dischargeable in a bankruptcy proceeding given the same are punitive in nature.

10. MONITORING AND COMPLIANCE

10.1 Upon request, Respondent agrees to provide books, records and documents to the State at any time, and further, to informally or formally under oath, provide testimony and other information to the State relating to compliance with this Assurance. Respondent shall make any requested information available within one (1) week of the request, at the Office of the Attorney General or at any other location within the State of Tennessee that is mutually agreeable in writing to Respondent and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

10.2 The State of Tennessee has the right to test shop Respondent for the purpose of confirming compliance with this Assurance and state law. The test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with Respondent. Further, the State of Tennessee may record any or all aspects of its visit(s) to Respondent in audio or video form without notice to Respondent.

11. PRIVATE RIGHT OF ACTION

11.1 Pursuant to Tenn. Code Ann. § 47-18-109 and 47-18-108(e), nothing in this Assurance shall be construed to affect any private right of action that a consumer or any other person may hold against Respondent.

12. PENALTY FOR FAILURE TO COMPLY

12.1 Respondent understands that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

12.2 Respondent understands that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties. Respondent agrees to pay all court costs and attorneys' fees associated with any petitions to enforce this Assurance and Order against the Respondent.

13. REPRESENTATIONS AND WARRANTIES

13.1 Respondent represents and warrants that the execution and delivery of this Assurance is its free and voluntary act, that this Assurance is the result of good faith negotiations, and that Respondent agrees that the Assurance and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Assurance in good faith. Further, no offer, agreements, or inducements of any nature whatsoever have been made to it by the State of Tennessee, its attorneys or any employee of the Attorney General's Office or the Division of Consumer Affairs to procure this Assurance.

13.2 Respondent represents that signatories to this Assurance have authority to act for and bind the Respondent.

13.3 Respondent will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

13.4 Neither Respondent nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, the Motor Vehicle Commission or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondent.

13.5 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's advertising or other business practices.

13.6 Within thirty (30) days of the entry of this Assurance, Respondent shall submit a copy of this Assurance to each of its officers, directors, employees and any third parties who act directly or indirectly on behalf of the Respondent as an agent, independent contractor or who are involved in conducting business in the State of Tennessee. Within forty-five (45) days of entry of this Assurance, Respondent shall provide the State with an affidavit verifying and certifying that all required persons have been

supplied with a copy of this Assurance.

13.7 Respondent warrants and represents that it is the proper party to this Assurance and Order. Respondent further acknowledges that the State expressly relies upon this representation and warranty, and that if it is false, misleading, deceptive, unfair or inaccurate, the State has the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt, if the State so elects.

13.8 CompuCare Auto Diagnostic Center, Inc., doing business as Murfreesboro KIA represents that it is the true legal name of the entity entering into this Assurance of Voluntary Compliance and Agreed Order. Respondent understands that the State expressly relies upon this representation and if this representation is false, unfair, deceptive, inaccurate or misleading, the State shall have the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt, if the State so elects.

13.9 This Assurance and Agreed Order may only be enforced by the parties hereto.

13.10 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

13.11 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

13.12 This Assurance and Agreed Order constitutes the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Petition. This Assurance is limited to resolving only matters set forth in the State's Petition.

13.13 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Assurance shall not bar the State, a District Attorney General, Motor Vehicle Commission or other governmental entity from enforcing laws, regulations or rules against Respondent.

13.14 This Assurance shall be binding and effective against Respondent upon Respondent's execution of the Assurance. In the event the Court does not approve this Assurance, this Judgment shall be of no force and effect against the State of Tennessee.

13.15 Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

14. COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES

14.1 Nothing in this Assurance and Order shall be construed as relieving Respondent of the obligation to comply with all state or federal laws, regulations or rules.

15. FILING OF ASSURANCE

15.1 Upon the execution of this Assurance, the Attorney General shall prepare and file in the Chancery Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondent hereby waives any and all rights which it may have to be heard in connection with judicial proceedings upon the Petition. Respondent agrees to pay all costs of filing such Petition, Assurance and Agreed Order. Simultaneously with the execution of this Assurance, Respondent shall execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order. The Respondent agrees that it consents to the entry of this Assurance and Agreed Order without further notice.

16. APPLICABILITY OF ASSURANCE TO RESPONDENT

AND ITS SUCCESSORS

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16.1 Respondent agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to CompuCare Auto Diagnostic Center, Inc., a Tennessee corporation, doing business as Murfreesboro KIA, each of its officers, directors, managers, agents, assigns, representatives, employees, partners, subsidiaries, affiliates, parents, related entities, joint venturers, persons or other entities it controls, manages or operates, its successors and assigns, and to other persons or entities acting directly or indirectly on its or their behalf.

17. NOTIFICATION TO STATE

17.1 Any notices required to be sent to the State or the Respondent by this Assurance shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State:

Carolyn Smith
Assistant Attorney General
Office of the Attorney General
Consumer Protection Division
425 Fifth Avenue North, 2nd Floor
Nashville, Tennessee 37243

17.2 For five (5) years following execution of this Assurance, Respondent shall notify the Office of the Attorney General, in writing, at least thirty (30) days prior to the effective date of any proposed changes in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries, or any other changes in Respondent's status that may effect compliance with obligations arising out of this Assurance.

18. COURT COSTS

18.1 All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.